

Rethinking the right to refuse hazardous work

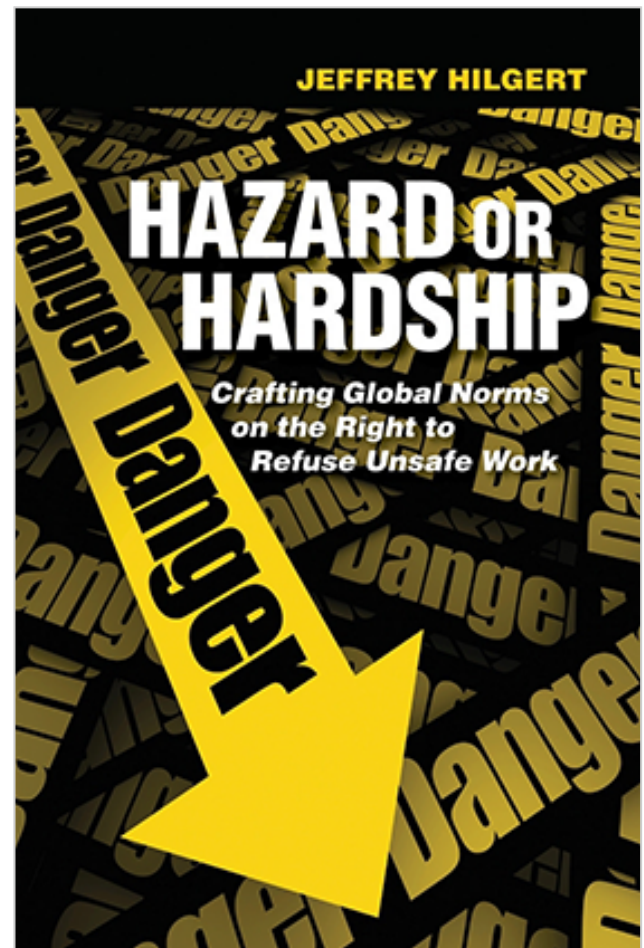
Hazard or Hardship: Crafting Global Norms on the Right to Refuse Unsafe Work. By Jeffrey Hilgert. Ithaca, NY: ILR Press, an imprint of Cornell University Press, 2013, 207 pp., \$45.00 hardcover.

Today, approximately 2 million workers around the world succumb to work-related fatalities and another 270 million suffer nonfatal work-related accidents every year. Many such workers have simply been ignored or even lost their jobs because they acted out or spoke up in the presence of a hazardous work environment. It is important for all workers to feel safe while on the job, as well as feeling protected by international guidelines to refuse work that they are not comfortable executing. Employer-to-employee communication and the global standards for refusing unsafe work are vital in the pursuit of creating the most productive and efficient global economy.

In his book *Hazard or Hardship: Crafting Global Norms on the Right to Refuse Unsafe Work*, Jeffrey Hilgert makes a persuasive argument against the current legal framework regarding the right to refuse unsafe work around the world today. The book explores why some refusal rights are not well protected, and the author tells the story through real human experiences. He explains the consequences of work refusals, the rationale behind the protection laws, the origins and effectiveness of the current legal framework, and the alternatives that could be put in its place.

The biggest and most contentious challenges faced in crafting global norms to refuse unsafe work pertain to defining precisely what a hazard is and specifying who gets to decide how dangerous the work truly is.

Employees' understanding of hazardous work differs from the understanding of their employers, as well as from that of policymakers and judges. Hilgert is under the impression that the right to refuse unsafe work should be considered a basic and fundamental human right



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under international law. That is exactly how the International Labour Organization (ILO) defined that right in its Convention No. 155 in 1980. Most of the book, however, is devoted to criticizing the effectiveness of Convention No. 155.

Starting in the 1940s, collective bargaining became the most common way to protect the right to refuse unsafe work for employees in North America. The popularity of this approach continued into the 1960s and 1970s, even after the passage of the Occupational Safety and Health Act (OSHA) of 1970. The main problem with collective bargaining is that it does nothing to protect individuals, who have rights only insofar as they do not affect the business needs of managers. Hilgert explains, “The right to refuse unsafe work as a global human right has been made a ‘safe’ right—a right of limited social protection but a ‘safe’ right for business, management control, and laissez-faire economics.”

In *Hazard or Hardship*, Hilgert describes how individual employees face a very high legal bar under ILO standards when they attempt to submit a claim for unsafe work. First, the employee has to justify his or her claim that a hazard exists—a requirement that places an unattainably high burden of proof on the employee to provide evidence of a “reasonable” hazard. Second, the employee must report to the company’s management so that it can conduct an evaluation of the refusal. This step assumes that employers are neutral and unbiased in judging the merits of the employee’s case in relation to the employer’s business needs—an assumption that is hardly likely in workplaces around the world. Third, the ILO leaves it up to the individual governments to decide whether to pursue workers’ health and safety. Unfortunately, this approach permits employee protections to be neglected or forgotten under international labor standards. In sum, the ILO standards impose serious obstacles to the employee’s right to refuse unsafe work.

Hilgert explains how the model formed under Convention No. 155, with limited refusal rights, serves as the dominant global model of the right to refuse unsafe work. So, how well is it working? A 1992 study examined about 300 refusal-to-work complaints during 1987–88 in the province of Ontario, Canada. It found that only 16.2 percent of the refusals came from the nonunion workforce; the rest were from workers already under a collective bargaining agreement. The authors of the study concluded that there remained an imbalance of power: the workers who stood to gain the most from refusal rights, in effect, gained very little. Under OSHA laws in the United States, employees similarly face obstacles to proving the merit of their claims about hazardous conditions. The result is that, of the 1,864 employee complaints in 2007, only 390 were found to have merit. The irony is that, at the same time that the employees have the burden to provide proof of the hazardous condition by meeting a predetermined hazard threshold, the employer is not obliged to prove that the condition is *not* hazardous, rendering the process more employer friendly. Hilgert maintains that, because the number of work refusals has remained low relative to the number of workplace injuries, illnesses, and fatalities, it is likely that the legal framework for protecting the right to refuse is an ineffective framework that needs to be revamped.

The book also delves into the origins of the global model and the negotiations that took place during Convention No. 155, which were highly contested and very controversial. Ultimately, any amendments proposed by members of workers’ groups were flushed out, and the managerial profit-driven prerogatives prevailed. Evidence indicates that refusal rights under the restricted legal framework are not effective and ignore the inherent social inequality between employer and employee in the workplace. What Hilgert calls the “silent crisis

in international occupational health and safety policy,” these global norms that hinder employee resistance and sustain employer power force workers to make the impossible choice of deciding between hazard and hardship.

Hilgert offers some alternatives and some solutions to fix this silent crisis: allowing all work refusals to be protected, protecting workers against any form of discrimination, requiring health committees to participate in collective bargaining agreements, and many more. The ultimate goal for Hilgert is the idea of “decommodifying labor”: workers should not be treated as commodities that can be bought and sold at a price, and we must rethink relationships that take place in the working environment.

I enjoyed reading this book; *Hazard or Hardship* is relatively easy to read, and the author gives detailed insights into the history of the right to refuse unsafe work. Refusal rights may seem like a very simple and basic right to an ordinary person, but Hilgert dives into all of the different factors involved in them. Although I do generally agree with what he argues for, I will say that a particular problem the book has is that it appears to be one sided. Hilgert tends to make questionable assumptions in his claims and also tends to exaggerate the brutality of management at times. One factor worth considering that isn’t mentioned is how well employees are being compensated in high-risk working environments. I also would like to have had the author examine the possible negatives of his viewpoint or the benefits of the current system in place. For example, for businesses in a system that allows all refusal rights to have merit, the tradeoff is likely to be monetary losses or declines in productivity. Overall, *Hazard or Hardship* is an informative read that forced me to think differently about workplace injuries and illnesses around the world today and about the alternative ways we can prevent them from happening.

SUGGESTED CITATION

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